

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC12-226
DCA CASE NO. 3D11-2746

Kevin Brantley

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW TO THE
DISTRICT COURT OF APPEAL, THIRD DISTRICT

BRIEF OF RESPONDENT ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Petitioner, Kevin Brantley, was the defendant in the trial court and Appellant in the District Court of Appeal, Third District. Respondent, the State of Florida, was the prosecution in the trial court and the Appellee in the District Court of Appeal, Third District. Petitioner now seeks discretionary review of the Third District Court of Appeal opinion in *Brantley v. State*, 76 So. 3d 345 (Fla. 3d DCA 2011).

The Respondent rejects Petitioner's statement of the case and facts. Petitioner improperly relies on facts that do not appear within the four corners of the majority opinion. *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986) ("Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision. Neither a dissenting opinion nor the record itself can be used to establish jurisdiction."). No facts were contained in the opinion of the Third District Court of Appeal. Thus, Petitioner improperly relies on facts that are not within the four-corners of the majority opinion. In its entirety, the majority opinion in the instant case, *Brantley v. State*, held as follows:

PER CURIAM.

Affirmed. *See Garcia v. State*, 722 So.2d 905, 907 (Fla. 3d DCA 1998) ("The voluntary waiver of a right does not constitute an illegal sentence.").

The State's response follows.

SUMMARY OF THE ARGUMENT

The decision of the Third District Court is not in express and direct conflict with any decisions of this Court or any of the district courts of appeal on the same question of law. Here, the opinion of the Third District Court of Appeal does not cite to a case where jurisdictional review has been granted or a case that is pending review; nor does it contain any discussion of the facts of this case. Despite Petitioner's attempts to introduce facts not contained in the district court's opinion, the jurisdiction of this Court is restricted to cases where the conflict appears in the four corners of the majority decisions. Further, Petitioner's reliance on *Garcia v. State*, 722 So. 2d 905 (Fla. 3d DCA 1998) and *Taylor v. State*, 687 So. 2d 33 (Fla. 3d DCA 1997), is improper as they are also from the Third District and therefore cannot form the basis for express and direct conflict in this case. Further, Petitioner cites federal cases *Lemaster v. USAA Life Ins. Co.*, 922 F. Supp. 581 (M.D. Fla. 1996) and *DeRoo v. United States*, 223 F.3d 919 (8th Cir. 2000), which is improper as these cases are not from another state district court or the Florida Supreme Court. Therefore, the Third District Court's opinion in the instant case does not give rise to any express conflict, nor any other basis for this Court to exercise its discretionary review jurisdiction. Accordingly, this Court should decline to exercise its jurisdiction to review the lower court's decision.

ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH ANY DECISIONS OF THIS COURT OR ANY OF THE DISTRICT COURTS OF APPEAL.

As a general rule, conflict jurisdiction exists when a decision of a court of appeal expressly and directly conflicts with another court of appeal or the Florida Supreme Court “on the same question of law.” Art. V, § 3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iv). “Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision. Neither a dissenting opinion nor the record itself can be used to establish jurisdiction.” *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986); *see also The Florida Bar v. B.J.F.*, 530 So. 2d 286, 288 (Fla. 1988).

In the instant case, Petitioner argues that the Third District Court of Appeal’s opinion in *Brantley v. State* is in express and direct conflict with (verbatim): “[A] decision of this Court and with decisions of other District Courts of Appeals on the same point of law.” (B. 5). Petitioner then goes on to argue the merits of his case, which is improper in a jurisdiction brief. (B. 6-8). Fla. R. App. P. 9.120 (Petitioner’s brief, limited solely to the issue of supreme court’s jurisdiction . . . “).

The jurisdiction of this Court is limited to a narrow class of cases enumerated in the Florida Constitution. Art. V, § 3, Fla. Const. Despite Petitioner’s attempts to

introduce facts not contained in the district court's majority opinion, the jurisdiction of this Court is restricted to cases where the conflict appears in the four corners of the majority decision. *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986); *Jenkins v. State*, 385 So. 2d 1356, 1359 (Fla. 1980). In this case the opinion of the Third District merely affirms with a citation. The case cited in the Third District's opinion is not pending review; nor does the opinion contain any discussion of the facts of this case. Therefore, the Third District's opinion does not give rise to any express conflict, nor any other basis for this Court to exercise its discretionary review jurisdiction.

Further, Petitioner's reliance on *Garcia v. State*, 722 So. 2d 905 (Fla. 3d DCA 1998) and *Taylor v. State*, 687 So. 2d 33 (Fla. 3d DCA 1997), is improper as they are also from the Third District and therefore cannot form the basis for express and direct conflict in this case. Petitioner also cites federal cases *Lemaster v. USAA Life Ins. Co*, 922 F. Supp. 581 (M.D. Fla. 1996) and *DeRoo v. United States*, 223 F.3d 919 (8th Cir. 2000). This is not a proper basis for invoking discretionary review as conflict must be express and direct between another court of appeal or the Florida Supreme Court. Art. V, § 3(b)(3), Fla. Const.

Additionally, Petitioner's line of reasoning in citing all cases that address the same rule of law as his case regardless of the specific and individual facts of each case is misguided. The fact that two cases cite the same rule of law does not give rise

to express and direct conflict. Rather, it is the application of the law on substantially the same facts that may give rise to conflict. *See Riggs v. State*, 918 So. 2d 274, 278 (Fla. 2005)(“Riggs sought review in this Court based on express and direct conflict with [the First District in] *Eason*. Although the two decisions recite the same principles of Fourth Amendment law, we have jurisdiction because of the Second District's ‘application of a rule of law to produce a different result in a case which involves substantially the same facts as a prior case.’”). As the opinion does not discuss any facts, the application of the rule of law cannot be determined.

Accordingly, this Court should decline to exercise its discretionary jurisdiction.

CONCLUSION

On the basis of the foregoing, this Court should decline to exercise its jurisdiction to review the lower court's decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Petitioner on Jurisdiction was mailed this to Kevin L. Brantley, DC 412858, 3950 Tiger Bay Road, Daytona Beach, Florida 32124-1098 on February 28, 2012.

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CERTIFICATE REGARDING FONT SIZE AND TYPE

The undersigned attorney hereby certifies that the foregoing Brief of Respondent on Jurisdiction has been typed in Times New Roman, 14-point type.

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